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Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Rachelle Lockhart, individually,  
  
Plaintiff,

vs.

Smith's Food & Drug Centers, Inc.; and  
DOES 1 through 100; and ROE  
CORPORATIONS 101 through 200  
  
Defendants.

Case No.

**NOTICE OF REMOVAL**

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-20-821104-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

**I.**  
**NOTICE OF REMOVAL IS TIMELY**

1. On September 14, 2020, Plaintiff RACHELLE LOCKHART, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about October 2, 2020. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

1           3.       The Complaint filed and served on SMITH’S merely alleged that “Plaintiff has  
2 suffered injury and damages in an amount in excess of \$15,000.00.” (Compl. ¶20).

3           4.       Defense counsel learned that the value of this case was sufficient for Federal  
4 jurisdiction on November 4, 2020. On that date, Plaintiff filed and served a Request for Exemption  
5 from Arbitration in the pending State Court litigation. Therein, Plaintiff alleges that her medical  
6 specials total \$91,864.74. (Pl.’s Petition at 2).

7           Upon receiving this information, Defense counsel learned that the “amount in controversy”  
8 exceeds the jurisdictional minimum for diversity jurisdiction.

9           5.       This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

10           If the case stated by the initial pleading is not removable, a notice of  
11 removal may be filed within thirty days after receipt by the defendant,  
12 through service or otherwise, of a copy of an amended pleading,  
13 motion, order or other paper from which it may first be ascertained  
14 that the case is one which is or has become removable, except that a  
case may not be removed on the basis of jurisdiction conferred by  
section 1332 of this title more than 1 year after commencement of the  
action.

15           6.       The following pleadings have been entered and/or filed in State Court:

- 16           a.       Plaintiff’s Complaint filed September 14, 2020;  
17           b.       Proof of Service of Summons and Complaint filed October 12, 2020;  
18           c.       SMITH’S Answer to Plaintiff’s Complaint filed October 22, 2020;  
19           d.       Plaintiff’s Request for Exemption from Arbitration was served on  
20           November 4, 2020; and  
21           e.       Commissioner’s Decision on Request for Exemption was served on  
22           November 19, 2020.

23           7.       Other than the pleadings discussed above, no further proceedings have taken place in  
24 District Court, Clark County, Nevada as of the filing of this notice of removal.

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1 II.

2 **DIVERSITY JURISDICTION EXISTS**

3 8. This is a civil action over which this Court has original jurisdiction pursuant to 28  
4 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in  
5 controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between  
6 citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

7 **A. The Amount in Controversy Requirement is Satisfied.**

8 9. Plaintiff's Complaint merely alleged that "Plaintiff has suffered injury and damages  
9 in an amount in excess of \$15,000.00." (Compl. ¶20).

10 10. In addition to the above, Plaintiff's Request for Exemption from Arbitration served  
11 on November 4, 2020 indicated that Plaintiff's medical specials total \$91,864.74. (Pl.'s Petition at  
12 2).

13 **B. The Parties Are Diverse.**

14 11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and  
15 believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada.  
16 (See Compl. ¶2) .

17 12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio  
18 Corporation with its principal place of business in the State of Utah.

19 III.

20 **REMOVAL TO THIS JURISDICTION IS PROPER**

21 13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state  
22 court action to this Court is appropriate.

23 14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and  
24 division embracing the place where the state action is pending 28 U.S.C. §108.

25 15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

26 16. SMITH'S reserves all defenses, including, without limitation, the defense of lack of  
27 personal jurisdiction.

28 17. SMITH'S requests a trial by jury of all issues.

18. Defense counsel is providing Plaintiff, by and through her counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court, Clark County, Nevada, where the action is currently pending.

Dated this 4th day of December, 2020.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby  
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